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Attorneys for Intervenor Thomson  
Consumer Electronics, Inc. and  
Thomson S.A. (Specially Appearing)

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: CATHODE RAY TUBE (CRT)  
ANTITRUST LITIGATION

Case No. 07-5944-SC

MDL No. 1917

This Document Relates to:

ALL INDIRECT PURCHASER ACTIONS.

**DECLARATION OF LAURA KABLER  
OSWELL IN SUPPORT OF OPPOSITION  
OF INTERVENOR THOMSON  
CONSUMER ELECTRONICS, INC. AND  
THOMSON S.A. (SPECIALLY  
APPEARING) TO PLAINTIFFS' MOTION  
FOR LEAVE TO AMEND**

Date: September 27, 2012

Time: 1:00 p.m.

JAMS: Two Embarcadero Center, Suite 1500

Judge: Hon. Samuel Conti

Special Master: Hon. Charles A. Legge (Ret.)

[OPPOSITION; MOTION TO INTERVENE  
AND [PROPOSED] ORDER FILED  
CONCURRENTLY HERewith]

1  
2 I, Laura Kabler Oswell declare under penalty of perjury as follows:

3           1.       I am a member of the Bar of the State of California, and associated with the firm  
4 of Sullivan & Cromwell LLP, counsel to Intervenor Thomson Consumer Electronics, Inc. and  
5 Thompson S.A., which is specially appearing in this action (collectively, "Thomson"). I submit this  
6 Declaration in support of Thomson's Opposition to Plaintiffs' Motion for Leave to Amend Complaint.

7           2.       Attached as Exhibit A hereto is a copy of an email I sent to counsel to the Indirect  
8 Purchaser Plaintiffs on January 16, 2009. This email is the last written communication with counsel to  
9 the Indirect Purchaser Plaintiffs that I have in my files prior to the filing of the Indirect Purchaser  
10 Plaintiffs' Consolidated Amended Complaint on March 16, 2009.

11           3.       According to the entries on my calendar, a teleconference on January 21, 2009  
12 was my final communication with counsel to the Indirect Purchaser Plaintiffs prior to the filing of their  
13 Consolidated Amended Complaint.

14           4.       Attached as Exhibit B hereto is a copy of the April 12, 2011 Order re: Indirect  
15 Purchaser Plaintiffs' Motion to File a Third Amended Consolidated Complaint in *In re TFT-LCD (Flat*  
16 *Panel) Antitrust Litig.*, No. 07-1827 (N.D. Cal.) (Dkt. No. 2641).

17           5.       Attached as Exhibit C hereto is a copy of an excerpt from the transcript of the  
18 September 22, 2010 hearing in the case entitled *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07-  
19 1827 (N.D. Cal.).

20 Executed this 14th day of September 2012, at Palo Alto, California

21                               /s/ Laura Kabler Oswell

22   Laura Kabler Oswell  
23  
24  
25  
26  
27  
28

## **EXHIBIT A**

**Oswell, Laura Kabler**

---

**From:** Oswell, Laura Kabler  
**Sent:** Friday, January 16, 2009 8:49 AM  
**To:** 'Lauren Russell'; de Bretteville, Jason  
**Cc:** 'Cadio Zirpoli'; 'Mario Alioto'  
**Subject:** RE: CRT, MDL 1917/Requests for information from Thomson S.A.

Lauren, thank you for your email. As we discussed when we spoke last with you and Cadio, we have continued our investigation into the information requested in your email below. We suggest that we set up a time to speak more about what we have learned through that process. Please let us know when you are available for such a call next week.  
Regards,  
Laura

-----Original Message-----

**From:** Lauren Russell [<mailto:lauren russell@t ATP.com>]  
**Sent:** Wednesday, January 14, 2009 3:46 PM  
**To:** Oswell, Laura Kabler; de Bretteville, Jason  
**Cc:** 'Cadio Zirpoli'; 'Mario Alioto'  
**Subject:** FW: CRT, MDL 1917/Requests for information from Thomson S.A.

Jason and Laura:

When Cadio and I spoke with you on December 1, you told us you were in the process of gathering information and would get back to us on December 8 with an update and a clear timeline for your client's responses. To date we have heard nothing from you. It has now been more than 2 months since our original requests (see email below from November 4, 2008). As we explained to you on the phone, if we cannot get this information from your client informally, we will have to propound formal discovery requests. Please let us know immediately whether you intend to respond to our informal requests, and if so, when. Thank you.

Lauren

Lauren C. Russell  
Attorney at Law  
Trump, Alioto, Trump & Prescott, LLP  
2280 Union Street  
San Francisco, CA 94123  
Telephone: (415) 563-7200  
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**From:** Lauren Russell [<mailto:lauren russell@t ATP.com>]  
**Sent:** Tuesday, November 04, 2008 3:34 PM  
**To:** 'kablerl@sullcrom.com'; 'debrettevillej@sullcrom.com'  
**Cc:** 'malioto@t ATP.com'  
**Subject:** CRT, MDL 1917/Requests for information from Thomson S.A.

Dear Jason and Laura:

As we discussed on our call last Friday, here is a list of information we would like from Thomson S.A. ("Thomson") so that we may make an informed decision as to whether Thomson is a proper defendant in this case. Under paragraph 14 of the Stipulation And Order For Limited Discovery Stay, the relevant time period for these requests is from 2000 to the present.

1. List of CRTs and CRT Products (televisions and computer monitors) manufactured by Thomson
2. List of customer names for CRTs and CRT Products
3. Worldwide CRT and CRT Product sales by country
4. Names of senior sales persons with responsibility for the sale of CRTs and/or CRT Products
5. Details of any government investigations into Thomson's conduct in the market for CRTs or CRT Products
6. Does or did Thomson specifically design any CRTs or CRT Products for the U.S. market?
7. Identify CRTs or CRT Products manufactured by Thomson which are/were shipped into the U.S.?
8. Details of Thomson's corporate structure, in particular the relationship with Thomson, Inc.
  - a. Is Thomson Inc. a wholly-owned subsidiary of Thomson?
  - b. Does Thomson Inc. have an independent BoD?
  - c. Did Thomson Inc. purchase CRTs or CRT Products from Thomson for sale in the U.S. at any time?
  - d. What products did Thomson Inc. manufacture and sell?
  - e. Does Thomson Inc. still manufacture and sell any CRTs and/or CRT Products in the U.S.? If not, when did it stop?
  - f. Did any other Thomson entities manufacture CRTs or CRT Products for sale in the U.S.?
9. Details of the sale by Thomson and Thomson Inc. of their CRT and CRT Products business to the joint venture TCL-Thomson Electronics Corp.
10. Does TCL-Thomson Electronics Corp. currently manufacture CRTs and CRT Products for sale in the U.S.?

These requests are based on similar requests we have made to several other defendants that are asserting a personal jurisdiction defense.

We look forward to hearing from you so that we may avoid the need for formal jurisdictional discovery. Please do not hesitate to contact me if you have any questions or wish to discuss any of the requests.

Regards,

Lauren

Lauren C. Russell  
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San Francisco, CA 94123  
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## **EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST  
LITIGATION

No. M 07-1827 SI

MDL. No. 1827

This Order Relates to:

ALL CASES

**ORDER RE: INDIRECT PURCHASER  
PLAINTIFFS' MOTION TO FILE A  
THIRD AMENDED CONSOLIDATED  
COMPLAINT**

Now before the Court is the indirect purchaser plaintiffs' motion for leave to file a third amended complaint. The indirect purchaser plaintiffs seek to amend the complaint to add new defendants and co-conspirators, and to add additional state law claims.

With regard to the proposed new defendants and co-conspirators, the Court finds that as to certain proposed new defendants, plaintiffs have demonstrated that leave to amend should be granted and that there is no prejudice or delay caused by amendment. Specifically, plaintiffs may amend the complaint to add (1) Unipac, Acer Display and Quanta Display as defendants in order to clarify the liability of AU Optronics Corporation; (2) Chimei Innolux, which was formed by a three-way merger by current defendants; and (3) Epson Imaging Devices Corporation.

However, the Court finds that the indirect purchaser plaintiffs have not shown that it is appropriate to amend the complaint to name three additional proposed defendants, Hydis Technologies Co., Mitsubishi Electric Corporation, and Mitsubishi Electric & Electronics USA, Inc. The Court finds that adding these entities as defendants will cause delay due to service, new discovery, and motion practice. In addition, adding these entities as defendants might require revisiting class certification to

1 address issues specific to these entities. The indirect purchaser plaintiffs may, however, amend the  
2 complaint to name these entities as co-conspirators.

3 The Court GRANTS plaintiffs' motion to amend to add the following entities as named co-  
4 conspirators: Fujitsu Display Technologies Corporation, NEC Corporation, NEC LCD Technologies  
5 Ltd., NEC Electronics America, Inc., Panasonic Corporation, Panasonic Corporation of America, Sony  
6 Corporation, and S-LCD Corporation.

7 The indirect purchaser plaintiffs also seek to add four new state law claims. The Court GRANTS  
8 plaintiffs leave to amend to add claims under the New York antitrust statute and the Missouri  
9 Merchandising Practices Act.<sup>1</sup> The Court DENIES plaintiffs' motion to the extent that plaintiffs seek  
10 to add claims under Illinois and Oregon law. The States of Illinois and Oregon have opposed the  
11 proposed amendments on numerous grounds.<sup>2</sup> The Court finds that the States' objections are well taken  
12 in light of the issues raised in the pending proceedings related to the indirect purchaser plaintiffs' motion  
13 for approval of the class settlements with certain defendants.<sup>3</sup>

14 The indirect purchaser plaintiffs' amended complaint must be filed by **April 29, 2011**. This  
15 order resolves Docket Nos. 1948 and 2016.

16 **IT IS SO ORDERED.**

17  
18 Dated: April 12, 2011



SUSAN ILLSTON  
United States District Judge

19  
20  
21  
22 <sup>1</sup> In an order filed April 11, 2011, the Court granted in part and denied in part defendants'  
23 motion to dismiss Missouri's claim under the MMPA in Missouri's *parens patriae* complaint. Docket  
24 No. 2632. When preparing the amended complaint, plaintiffs should review the Court's April 11, 2011  
25 order for guidance regarding the MMPA claim.

26 <sup>2</sup> In contrast, the State of Missouri filed a statement in support of the indirect purchaser  
27 plaintiffs' motion to amend the complaint to add the MMPA claim.

28 <sup>3</sup> Those proposed settlements include, *inter alia*, damages settlements for Oregon and Illinois  
classes, although the operative complaint does not allege claims under Oregon and Illinois law, and the  
Court did not certify statewide classes under Oregon and Illinois law. Oregon and Illinois have  
intervened and filed objections to the proposed settlements. In December 2010, the Court appointed  
retired Judge Weinstein to review the indirect purchaser plaintiffs' proposed settlements, and to make  
a recommendation to the Court regarding approval of those settlements.



## **EXHIBIT C**

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE SUSAN ILLSTON

IN RE: TFT-LCD (FLAT PANEL) )  
ANTITRUST LITIGATION, )  
 )MDL 07-1827 SI  
 )San Francisco, California  
 ) September 22, 2010  
 ) 3:30 p.m.

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**For Direct Purchaser** LIEFF, CABRASER, HEIMANN  
**Plaintiffs:** & BERNSTEIN  
275 Battery Street, 30th Fl.  
San Francisco, California 94111  
**BY: RICHARD M. HEIMANN, ESQ.**  
**JORDAN ELIAS, ESQ.**  
**ERIC FASTIFF, ESQ.**  
**BRENDAN GLACKIN, ESQ.**  
  
PEARSON, SIMON, WARSHAW & PENNY  
44 Montgomery  
Suite 2450  
San Francisco, California 94104  
**BY: BRUCE SIMON, ESQ.**  
**JESSICA GRANT, ESQ.**

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

**Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR**  
Official Reporter - US District Court  
Computerized Transcription By Eclipse

*Debra L. Pas, CSR, CRR, RMR, RPR*  
*Official Reporter - U.S. District Court - San Francisco, California*  
*(415) 431-1477*

1 to you.

2 And then the other issues are wording and --

3 **THE COURT:** And that I will deal with. I've got an  
4 order. I just haven't done it yet.

5 All right. Now, let's talk about the indirect  
6 purchasers. The motion to file the third amended complaint,  
7 who wants to talk about that?

8 **MR. CORBITT:** Good afternoon, your Honor. Craig  
9 Corbitt.

10 **THE COURT:** Okay. The indirect purchasers want to  
11 file a third amended complaint to add new defendants,  
12 Unipack -- I'll give you my view start to finish and then you  
13 can tell me briefly what you want to argue about, okay?

14 I'm inclined to grant leave to amend to add Unipack,  
15 Acer Display and Quanta Display.

16 I have a question for you about Chimei Innolux. I'm  
17 inclined to grant this. Who is the defendant who is going to  
18 be responding on these issues?

19 **MR. CHERRY:** Well --

20 **THE CLERK:** Is this Epson's? No, this isn't Epson's  
21 motion.

22 **MR. CHERRY:** Yeah, this is the motion for leave to  
23 amend.

24 **THE CLERK:** Oh, wait, but that's what Mr. Johnson,  
25 Brady Johnson was really, really wanting to --

1           **MR. CHERRY:** The state AG's are objecting.

2           **THE CLERK:** Right. I have a phone number. I can  
3 call him on the old-fashioned phone. But he's really, like, in  
4 a panic that he's not able to -- and I don't know how important  
5 it is.

6           **THE COURT:** Why don't you phone him and see if you  
7 can get him?

8           **THE CLERK:** Okay. Well, I just wanted to make sure  
9 it's okay that I do all that stuff.

10           (Brief pause.)

11           **MR. CHERRY:** Your Honor, if you wanted to know who is  
12 going to address it, I wasn't planning to address the motion in  
13 particular, but you asked about the Chi Mei and the Innolux,  
14 and I would like to speak to that when you are ready.

15           **THE COURT:** And then you are going to do the --

16           **MR. LAZERWITZ:** Mike Lazerwitz for LG Display.

17           We wrote the papers, but the -- our position is  
18 straightforward and I don't think you need to hear more from  
19 us.

20           Mitsubishi also filed its own papers and I thought  
21 that the Mitsubishi lawyer was going to be here and raise that  
22 with you.

23           **MR. TRUAX:** Good morning, your Honor. It's Terry  
24 Truax, T-r-u-a-x, on behalf of Mitsubishi Electric Corporation.

25           **THE CLERK:** Can you guys make sure you speak loud so

1 that the person on the phone can -- Mr. Brady, if you could  
2 quickly state your appearance?

3 **MR. JOHNSON:** My name is Brady Johnson for the State  
4 of Washington.

5 **MR. HARROP:** This is Blake Harrop for the State of  
6 Illinois.

7 **THE COURT:** Are the two of you all that are on the  
8 phone now?

9 **THE CLERK:** I have other numbers. I can --

10 **THE COURT:** Welcome. That's fine.

11 **MR. JOHNSON:** We're not hearing you.

12 **THE CLERK:** Okay. Well, you're on our old phone  
13 system, so this is all you get. Hopefully, you can hear it.

14 **MR. JOHNSON:** Okay. There you go.

15 **THE COURT:** All right. The indirect purchasers want  
16 to add Chimei Innolux as a defendant. As I understand it, it  
17 was formed in March of this year by a three-way merger of  
18 current defendant Chi Mei Optoelectronics Corp. and two other  
19 defendants.

20 I wanted to know what the real problem with this was.  
21 It didn't sound like a big deal to me.

22 **MR. CHERRY:** Well, two things. I mean, we don't  
23 believe there has been any showing of any involvement of  
24 Innolux or Topoly. I mean, they've never been mentioned. They  
25 just happened to enter into a three-way merger in March of this

1 year.

2           And the complaint just throws them in there with a  
3 single sentence that says they should -- you know, they should  
4 be defendants and they participated in the conspiracy. One  
5 sentence. That's it. And that can't be enough to bring them  
6 into the case. You know, they have to allege some facts to  
7 show they should be in the case.

8           If it's just a name change, you know, for the -- to  
9 say we're now the legal entity responsible for what CMO might  
10 have done, that's one thing; but they're saying Innolux and  
11 Topoly should be in the case and that they -- and in a single  
12 sentence just saying they participated in the conspiracy.

13           **THE COURT:** Mr. Corbitt?

14           **MR. CORBITT:** I think that's kind of an over-reading  
15 of the complaint, at least what we had in mind.

16           Chimei Innolux is, as we understand it, a new  
17 entity -- and this is very similar to the AUO issue, is a new  
18 entity that combined the former Chi Mei Corporation with  
19 Innolux and TPO Display Corporation. So it is appropriate for  
20 us to substitute Chimei Innolux in place of the former Chi Mei.  
21 I don't believe there is any dispute about that.

22           And we are -- to the extent that there is any  
23 subsidiary liability from Innolux or TPO Display Corporation,  
24 certainly Chimei Innolux would be liable for that we believe  
25 under the law, and under Taiwanese law in particular, but we

1 have not named them as additional defendants. We are simply  
2 pointing out that Chi Mei and Innolux Display Corporation and  
3 TPO Display Corporation are the predecessor entities, along  
4 with Chi Mei, that now form the new defendant Chimei Innolux.

5 **MR. CHERRY:** Your Honor, I don't believe that's what  
6 the complaint says.

7 **THE COURT:** What paragraph is it?

8 **MR. CHERRY:** Do you have your complaint?

9 **MR. CORBITT:** Yes. I think it's Paragraph 66.

10 **MR. CHERRY:** Can I see?

11 (Brief pause.)

12 **THE COURT:** He's right. It says more than that.

13 **MR. CHERRY:** I'm looking for the paragraph, but there  
14 is -- I know there's a paragraph in here that says that they  
15 participated -- here. It's Paragraph 160. It just says:

16 "The three predecessor companies of  
17 Chimei Innolux -- Chi Mei Optoelectronics,  
18 Innolux and TPO -- participated as  
19 co-conspirators in the conspiracy."

20 There is no basis for that.

21 **THE COURT:** I will give you leave to amend the  
22 complaint to say -- if it's a new name because of the merger to  
23 say what it is, but not to bring in the other two entities  
24 unless there are specific factual allegations about them.

25 **MR. CHERRY:** Okay.

1           **MR. CORBITT:** Okay.

2           **MR. BLUMENSTEIN:** Your Honor, Carl Blumenstein of  
3 Nossaman for AU Optronics.

4           If we could go back to your Honor's first comment  
5 regarding Quanta, Acer Display and Unipack, in their reply  
6 papers what the plaintiff said, to make clear, was we just want  
7 to add these allegations. We are not naming them as party  
8 defendants.

9           I think the complaint and the motion may have been a  
10 little bit ambiguous with that, with regard to that  
11 clarification, that the allegations will just come in. We'll  
12 deal with the allegations, but just to be clear, they are not  
13 going to be named as party defendants, which I think we all  
14 agree is --

15           **THE COURT:** It's not possible.

16           **MR. BLUMENSTEIN:** Right.

17           **THE COURT:** I understood that.

18           **MR. CORBITT:** That's correct, your Honor. However,  
19 in contrast to the issue we were just talking about with  
20 Chi Mei, we think it's very clear that these predecessor  
21 entities, while they were independent, were participants in the  
22 conspiracy and that AUO is not liable for them. We think  
23 that's clearly alleged in here.

24           **THE COURT:** But they are not named as defendants.

25           **MR. CORBITT:** They can't be. They don't exist any



1 more.

2           **THE COURT:** Okay. Hydix, I'm inclined to deny that.  
3 I just think it's too late to do that. I think it's going to  
4 just take too much time and there's no good reason not to do  
5 this -- not to have done it before.

6           I think it's -- I would give leave to name them as a  
7 co-conspirator, but not to bring them in as a defendant.

8           The same thing about Mitsubishi, frankly. I think  
9 it's too late to bring them in.

10           We can talk about Epson in a minute. You want to add  
11 co-conspirators. You want to add Fujitsu, right, as a  
12 co-conspirator?

13           **MR. CORBITT:** Yes.

14           **THE COURT:** Is it named as a co-conspirator in any of  
15 the other complaints?

16           **MR. CORBITT:** I don't know that it is, your Honor,  
17 but we have alleged and we have evidence that they participated  
18 in bilateral conspiracy meetings. I'm not sure whether any  
19 other plaintiff named them or not.

20           **THE COURT:** What about Sony?

21           **MR. CORBITT:** Sony has a joint venture with Samsung,  
22 SCL -- SLCD, excuse me -- which is, we think, through that  
23 joint venture, through Samsung's joint ownership and control of  
24 that with Sony is a participant in the conspiracy and is a  
25 co-conspirator.

1           **THE COURT:** Were they named as a co-conspirator in  
2 any of the other cases?

3           **MR. CORBITT:** Again, I don't know the answer.

4           **THE COURT:** Well, I am inclined at this time to grant  
5 that.

6           With respect to the adding of any state claims, I  
7 will tell you that I'm inclined to deny your request to add  
8 Illinois. I'm inclined to deny your request to add Oregon.  
9 I'm inclined to deny your request to add Missouri.

10           I wanted to ask you about New York. You have already  
11 got a claim, an indirect claim under New York state law. And  
12 you want to add the antitrust claim, the antitrust state law  
13 claim, right?

14           **MR. CORBITT:** Correct.

15           **THE COURT:** The defendants suggest that that's going  
16 to require a whole lot more briefing and decision making. Do  
17 you agree with that?

18           **MR. CORBITT:** No, I don't, your Honor. I think it's  
19 a straightforward claim under state antitrust law, just like  
20 the other states that you have that your Honor certified. It's  
21 the same class. It's just a different relief that is now  
22 available in light of the Supreme Court's *Shady Grove* decision.

23           Apparently, there are no new class reps there --

24           **THE COURT:** Right because --

25           **MR. CORBITT:** (Continuing) -- or anything like that.

1           **THE COURT:** Does anyone, any defendant want to talk  
2 about that?

3           **MR. LAZERWITZ:** Michael Lazerwitz for LG Display.

4           Your Honor, all I would say is what we put on our  
5 papers, what -- our position is it's a little bit late in the  
6 day, but if your Honor is inclined to disagree with us, we will  
7 analyze the new claim and if we think we have a motion, we will  
8 file it. If we don't, we won't.

9           **THE COURT:** I'm inclined to allow you to add the New  
10 York antitrust claim on account of things you set out in your  
11 papers, but, as I say, I'm inclined to deny Illinois, Missouri  
12 and Oregon.

13           And then we get to the new class settlements.

14           **MR. CORBITT:** I think Mr. Scarpulla may address the  
15 settlements, so can I, if I may, your Honor, respond to your --

16           **THE COURT:** You may briefly?

17           **MR. CORBITT:** (Continuing) -- your inclination to  
18 deny on the other points, which I -- I gather it all comes down  
19 to the timeliness issue.

20           **THE COURT:** I really does, yes.

21           **MR. CORBITT:** And I guess --

22           **THE COURT:** Timeliness and the timing. We are now  
23 however many months downstream from having certified your  
24 class. We are at least 12 months downstream from Mr. Scarpulla  
25 having said, "We're ready to try this case next month," or

1 Mr. Alioto or somebody. Somebody said they were really ready,  
2 and now we are amending the complaint. So now all those things  
3 go together to make me think it's not right.

4 **MR. CORBITT:** I guess I would say, your Honor, a lot  
5 has happened in the meantime, including a great deal of  
6 discovery that has been taken. And this goes to the point of  
7 adding the new defendants, is that we, in fact, have testimony,  
8 have documents that there simply wasn't time to review a year  
9 ago when they were at the class cert stage that indicate the  
10 involvement of these companies.

11 And we really didn't get underway with merits  
12 depositions at all until, I think, right around the time the  
13 class cert motions were argued, and there are now several dozen  
14 of them. There are several dozen more, I think, left to be  
15 completed.

16 And many, many documents that -- out of millions that  
17 were produced had not been finally reviewed at that stage,  
18 which now have been.

19 So we now have evidence of participation by these  
20 companies in the conspiracy. We think that they are part of  
21 it.

22 Moreover, we recognize that this case has been going  
23 on for several years now, but by the same token, the discovery  
24 cut-off that your Honor set is next May, which is eight months  
25 from now. And the trial date is nearly a year and a half from

1 now, in February 2012. And we think in light of that, that  
2 there is ample time to get whatever additional discovery may be  
3 necessary from these companies.

4 There is no prejudice that we can see to the  
5 defendants to the trial schedule. We are obviously still  
6 committed to that. And, you know, we will do what it takes to  
7 get the work done.

8 But you know, obviously, it's within your Honor's  
9 discretion, but I think this is not the kind of situation, as  
10 you've seen in some of the cases, where denial of leave to  
11 amend was upheld by the Ninth Circuit, where there was just  
12 extreme dilatoriness to the point of discovery would have to be  
13 reopened or, you know, it was two weeks before trial or  
14 anything like that. We are not anywhere close to that. We are  
15 a long way away.

16 In terms of the states that we propose to add, in  
17 particular Oregon and Illinois, that is a direct result of the  
18 Supreme Court's decision last spring, I think in April -- I  
19 don't remember the exact month -- in the *Shady Grove* case.

20 Prior to that, it was pretty clear under state law  
21 that a class claim could only be brought by -- if it could be  
22 brought, could only be brought by the Attorney Generals of  
23 those states. That was the precise issue that went up to the  
24 Supreme Court in the context of New York law and the Supreme  
25 Court said, no, that's wrong. Rule 23 trumps the state laws,

1 or the state in that regard. And as long as you can allege a  
2 class under Rule 23 -- you can bring a case under Rule 23 even  
3 if -- even despite the fact that if your case were in state  
4 court, you could not do that. Only the Attorney General could  
5 do that. So that is a clear change in the law, or at least an  
6 explication of the law by the Supreme Court that is relatively  
7 recent that simply did not exist at the time of the class cert.

8 And, again, we think that the burden to the  
9 defendants would be minimal. There are some new class reps,  
10 but we would make them available right away. We don't think  
11 that the analysis of the issues in terms of the methodology for  
12 class certification in terms of all the arguments the  
13 defendants have made and presumably would make again about the  
14 complexity of the distribution chain and all the difficulties  
15 that pass through and so forth, these are the same issues that  
16 your Honor has already ruled on and they are really no  
17 different with respect to these new states.

18 So we think that that is a clear changed circumstance  
19 and a recent changed circumstance that justifies adding those  
20 states to the case, although they weren't in there previously.

21 Likewise, for Missouri. Unfortunately, the Missouri  
22 Attorney General, I think, was -- the woman from that office,  
23 Ms. Schneider, was one of the people who intended to be on the  
24 conference call, who is not present or tied in, but I would  
25 respectfully request that since she supports the amendment and

1 would like to see the Missouri state claim added to this case,  
2 that your Honor would allow her to participate or at least  
3 defer a ruling on that until she has an opportunity to address  
4 the Court.

5 **THE COURT:** Did she file something to that effect?

6 **MR. CORBITT:** I'm pretty sure she contacted --

7 **THE COURT:** No, no, no. I mean, saying she supported  
8 your motion? Did she file something?

9 **MR. CORBITT:** I don't recall that she filed it. I  
10 have had a number of conversations with her.

11 You know, frankly, since there was no opposition to  
12 the concept of a Missouri claim per se, other than the general  
13 points the defendants made in opposing the motion that  
14 Mr. Lazerwitz had in his briefs and the other defendants and so  
15 forth, she was prepared to come in and say something, but there  
16 were no -- no questions raised about the substantive issues  
17 under Missouri law or changes in the Missouri law that we  
18 thought was necessary.

19 **THE COURT:** Did she just file a lawsuit?

20 **MR. CORBITT:** I'm sorry?

21 **THE COURT:** Did she just file a lawsuit?

22 **MR. CORBITT:** She filed a lawsuit, yes, I think about  
23 a month ago, around the same time at the time rest of the  
24 states filed a case.

25 **THE COURT:** All right. Well, she -- I'm sorry for

1 the telephone awkwardness. If she wants to file something,  
2 I'll be happy to take a look at it.

3 **MR. CORBITT:** I appreciate that.

4 **THE COURT:** I had not understood her to be supporting  
5 your motion.

6 Okay. What else?

7 **MR. CORBITT:** There are only a couple of states that  
8 don't like this, your Honor. The rest of them are in favor  
9 enough of it.

10 Well, I think those are the main points that I would  
11 make, your Honor. The rest of it is in our papers.

12 But, again, I would urge you that the timeliness  
13 issue is -- I understand, obviously, your Honor's desire to get  
14 this case moving, to not have a delay, to keep the discovery  
15 cut-off, to keep the trial date. We fully support that. No  
16 one wants that more in any case than plaintiffs do. In  
17 particular, we do. And we would not have tried to do this  
18 had we not thought that there was really more than sufficient  
19 time in order to get this done.

20 And, also, respectfully we think that the Supreme  
21 Court's *Shady Grove* decision is ample grounds to permit an  
22 amendment to add these additional states when we could have  
23 done it before.

24 **THE COURT:** All right. Thank you.

25 **MR. HAGLUND:** Mike Haglund representing the State of



1 Oregon.

2           One of the points we did not make in our papers is  
3 this, your Honor. We filed our case in the District of Oregon  
4 on August 10th. It's now been transferred and is in your  
5 court.

6           The scope of the amendment that the plaintiffs -- the  
7 indirect plaintiffs seek in their amended complaint excludes  
8 governmental entities. It's a much more practical approach to  
9 let the superior -- the lawyers with the superior ability to  
10 represent Oregon governments and Oregon consumers, the Attorney  
11 General, to proceed with Oregon's case.

12           If the amendment were granted, we have this situation  
13 where the indirect purchaser plaintiffs here are representing  
14 Oregon consumers, yet, we stay in the case as the Attorney  
15 General representing State of Oregon interests on behalf of the  
16 state government and all of the local governments, some 2,000  
17 estimated total governmental entities in the state.

18           The other point I would like to make --

19           **THE COURT:** You oppose his motion?

20           **MR. HAGLUND:** Absolutely.

21           **THE COURT:** That would be a bad thing, you think.

22           **MR. HAGLUND:** It's a very, I think, awkward and  
23 impractical approach to the State of Oregon's claims, which  
24 have not heretofore been in the case because of the way the  
25 class was defined. To have, in effect, Oregon claimants

1 bifurcated, governments represented by the AG and consumers  
2 represented by the independent -- or by the indirect purchaser  
3 plaintiffs.

4           The other point I think that's worth making is that  
5 their reading of *Shady Grove* is incorrect. Justice Stevens was  
6 quite clear in the opinion that his -- the applicable opinion  
7 in that case; that even where a state procedural statute may  
8 be, as he put it, procedural in the ordinary sense, it may be  
9 so bound up with the substantive rights given -- applicable to  
10 a particular claim that it still must give way or the federal  
11 rule must still give way to that combination of procedure and  
12 substance. That's exactly what we have here.

13           Oregon adopted it's own repealer, *Illinois Brick*.  
14 It's abundantly clear that the AG, both under that state  
15 statute as well as under Section 16 of the *Clayton Act*, is the  
16 right law firm to represent Oregon consumer as well as  
17 governmental interests. Their reading of *Shady Grove*, as if  
18 Rule 23 simply trumps everything associated with these state  
19 repealers is just an incorrect analysis of *Shady Grove*.

20           Thank you.

21           **THE COURT:** All right. Thank you.

22           **MR. HARROP:** Your Honor, this is Blake Harrop on  
23 behalf of the State of Illinois.

24           We are finding that as long as we stay on mute here,  
25 we can hear you; but as soon as I take you off mute, I cannot

1 hear anybody in the courtroom. So I'm going to sort of do this  
2 like a walkie-talkie and try to be short with what I say.

3 I support everything that Mr. Haglund just said and  
4 want to emphasize as well that the Illinois statute is clearly  
5 a substantive statute that would under the readings of both the  
6 assent and the current -- that is, five justices of the Supreme  
7 Court -- be one that should be honored ahead of a private  
8 action under class certification.

9 **THE COURT:** Thank you.

10 **MR. CORBITT:** May I respond briefly, your Honor?

11 **THE COURT:** Briefly.

12 **MR. CORBITT:** *Shady Grove*, we think, they are just  
13 wrong, but your Honor can read the case and obviously decide  
14 for yourself.

15 But the whole point of *Shady Grove* is that when you  
16 are in Federal Court, Rule 23 applies. If you meet the  
17 requirements of Rule 23, you can have a class.

18 With respect to the comments by the gentleman from  
19 Oregon, Oregon does not purport to represent businesses, only  
20 natural persons as we understand it. And so, therefore, the  
21 same gap that he alleges would be present if we don't represent  
22 governmental entities is present, I think, in his complaint.

23 Moreover, your Honor, we already represent consumers  
24 and businesses in Oregon and Illinois and all the other states  
25 to this extent. Your Honor certified a nationwide injunctive

1 class, which is, obviously, everybody in the country.

2           You know, we've been doing this case for three years.  
3 We've put a tremendous amount of effort into it, as your Honor  
4 knows. We've these classes certified. We've taken dozens and  
5 dozens of depositions and reviewed millions of documents. And  
6 so the notion that Attorney Generals, with all due respect,  
7 three years later can come in and file a case and therefore it  
8 should be presumed that what they do is superior to what we can  
9 do, we think is just wrong and is also contrary to the  
10 principle enunciated in the State of Hawaii case from many  
11 years ago by the Supreme Court, which is that an antitrust case  
12 as class actions are superior to parents claims.

13           **THE COURT:** Now, I wanted to talk about the Epson and  
14 Chung Hwa settlements.

15           **MR. SCARPULLA:** Good afternoon, your Honor. Francis  
16 Scarpulla appearing on behalf of the indirect purchasers on  
17 that issue, your Honor.

18           **THE COURT:** Good afternoon.

19           I'm very concerned that because the -- well, we have  
20 objections by Oregon, Washington and Illinois. We have an  
21 attorney for Oregon in the courtroom, right?

22           Do we have Illinois or Washington on the phone?

23           **UNIDENTIFIED VOICE:** Yes, your Honor. We are here.

24           **THE COURT:** Okay. My concern is that I now realize  
25 because of the issues raised in Epson, and thinking back on